

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KERRY HICKS,

Petitioner, No. 2:02-cv-1040-LKK-JFM (HC)

vs.

TOM CAREY, Warden,

Respondent. ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On November 18, 2008, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Neither party has filed objections to the findings and recommendations.

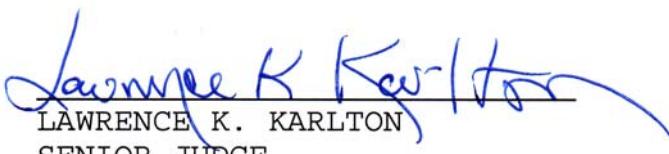
The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge's analysis. Accordingly, IT IS HEREBY ORDERED that:

////

1 1. The findings and recommendations filed November 18, 2008, are adopted in
2 full; and

3 2. Petitioner's May 27, 2008 motion to vacate judgment is construed as a second
4 or successive application for a writ of habeas corpus and, so construed, is dismissed without
5 prejudice to its refiling upon obtaining authorization from the United States Court of Appeals for
6 the Ninth Circuit.

7 DATED: December 23, 2008.

8
9 
10 LAWRENCE K. KARLTON
11 SENIOR JUDGE
12 UNITED STATES DISTRICT COURT